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10 IN THE UNITED STATES BANKRUPTCY COURT
11 FOR THE EASTERN DISTRICT OF CALIFORNIA
12 (Modesto Division)

| | | |
|------------------------|---|--------------------------|
| 13 In re: |) | Case No: 09-91950 |
| 14 Larry Leathers and |) | Chapter 7 Case |
| 15 Janice K. Leathers, |) | DC No. CWC-3 |
| 16 2308 Laguna Drive |) | |
| 17 Modesto, CA 95350 |) | |
| 18 S.S. xxx-xx-0009 |) | Date: March 31, 2010 |
| 19 xxx-xx-8043 |) | Time: 10:30 a.m. |
| 20 Debtors. |) | Place: Modesto Courtroom |
| |) | Department E |

21 MOTION FOR AUTHORITY TO SELL NON-EXEMPT
22 EQUITY IN REAL AND PERSONAL PROPERTY TO DEBTORS

23 To: The Honorable Ronald S. Sargis, U. S. Bankruptcy Judge:
24 The Chapter 7 Trustee, Stephen C. Ferlmann, pursuant to 11
25 U.S.C. § 363(b) and Federal Rule of Bankruptcy Procedure 6004,
26 respectfully moves the Court for authorization to sell the
27 Debtors' non-exempt equity in certain real and personal property
28 back to the Debtors in exchange for a payment of \$10,000.00, and
in support thereof respectfully represents:

1. This Court has jurisdiction of this matter under 28
U.S.C. §§ 1334 and 157(a).

2. On June 26, 2009, the Debtors filed a petition under

Chapter 7 of the bankruptcy Code, in the above-entitled Court. Stephen C. Ferlmann, has been appointed Chapter 7 Trustee in the case.

3. Among the assets of the Chapter 7 bankruptcy estate is the Debtors' interest in the following real and personal property (the "Property"), to which the Debtors assigned the following fair market values in their Bankruptcy Schedule B:

| | |
|---|--------------------|
| a. Vacant Lot located at 1565 S.E. Jackson Place, Waldport, | \$46,480.00 |
| b. Personal property described as handyman repair & carpenter tools, ladders, dolly, air compressor, weed whip, chain saws, gardening tools, and storage shed . . | \$1,500.00 |
| c. 1984 Protec Toy Trailer | \$600.00 |
| d. Security deposit with landlord | \$850.00 |
| e. 1978 Holiday Rambler 27' Travel Trailer | \$700.00 |
| Total | <u>\$50,130.00</u> |

4. The Debtors' Bankruptcy Schedule D reflects that the above-described Property is unencumbered. The Debtors asserted exemptions under California Code of Civil Procedure ("CCP") § 704 on all of the above-described Property.

5. Based upon his experience in liquidating similar assets of bankruptcy estates, the Trustee believes that the Vacant Lot has a potential fair market value of \$30,000 but has functional problems with the local zoning and building departments with respect to developing the property. To place a septic system on the property will cost approximately \$20,000 and removal of trees and brush will cost \$5,400. The Trustee's local realtor in Waldport, OR advises the Trustee that these factors will severely limit the marketability of the property. The most logical buyer would be the Debtors who reside on the adjacent property.

1 6. Pursuant to a Minute Order of the Court entered on
2 February 26, 2010 (Document No. 52), the Trustee's objections to
3 the Debtors' claimed exemptions were sustained as to all of the
4 above-described Property.

5 7. The Debtors wish to retain the Property and desire to
6 purchase the non-exempt equity in the Property from the
7 bankruptcy estate.

8 8. Accordingly, the Trustee and the Debtors have entered
9 into an Equity Sale Agreement (the "Agreement") which provides
10 that the Debtors shall pay the bankruptcy estate the total cash
11 sum of \$10,000.00 (the "Purchase Amount") for their non-exempt
12 equity in the Property. A copy of the Equity Sale Agreement is
13 attached to the List of Exhibits filed concurrently herewith.
14 The Agreement further provides that the Purchase Amount shall be
15 non-exempt property of the Debtors' bankruptcy estate. Upon
16 payment of the Purchase Amount, the Debtors shall be entitled to
17 retain the Property and the Property shall cease being property
18 of the bankruptcy estate.

19 9. 11 U.S.C. § 363(b)(1) authorizes a trustee, after notice
20 and hearing, to sell property of the estate other than in the
21 ordinary course of business.

22 10. Trustee believes that the sale of the non-exempt equity
23 in the Property to the Debtors is in the best interests of the
24 estate and should be approved by the Court. The proposed equity
25 sale is an equitable and expeditious manner of liquidating the
26 Property by which the bankruptcy estate will eliminate the risks,
27 costs and delays of liquidating the Property by way of public
28 auction or by private sale.

1 WHEREFORE, Trustee respectfully requests that the Court
2 approve the Agreement, and authorize the Trustee to enter into
3 the proposed sale of the non-exempt equity in the Property to the
4 Debtors.

5 Dated: 3-16-10

Law Office of Carl W. Collins



Carl W. Collins
Attorney for Trustee